IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 94 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVPRASAD JAGDISHPRASAD SHARMA & ANR
Versus
STATE OF GUJARAT

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Appearance :
MR KJ SHETHNA for Appellants
MR SS PATEL APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 19/09/2006, 20/09/2006
21/09/2006 & 22/09/2006

ORAL JUDGMENT

1 The instant Appeal is preferred under Section 374 (2) of the

Code of Criminal Procedure, 1973, and is directed against the judgment and order dated 26th of December, 1988, delivered by Special Judge, Rajkot, in Special Case No. 21 of 1986, whereby present appellant No.1 Shivprasad Jagadishprasad Sharma being accused No.1 came to be convicted for the charges levelled against him under Section 161 of the Indian Penal Code as well as under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, while appellant No.2 – Dharamvirsinh Balvantsinh Jadeja, being accused No.2 came to be convicted under Section 165(a) of the Indian Penal Code. Appellant No.1 Shivprasad Jagadishprasad Sharma was sentenced to undergo imprisonment of one year and to pay fine of Rs. 1,000/- in default to undergo imprisonment for three months for the charges levelled against him under Section 161 of the Indian Penal Code as well as he was sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 1,000/- in default to undergo rigorous imprisonment of three months for the charges proved against him under Section 5(2) of the Prevention of Corruption Act, 1947. It was directed that substantive sentences were to run concurrently. While appellant No.2 was sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs. 500/- in default to undergo rigorous imprisonment for a period of one months for the offence proved against him under section 165(a) of the Indian Penal Code.

2 The facts leading to the prosecution case against both the appellants are as under :

One Vallabhbhai Savdasbhai Ramani, resident of village Jashvantpur, Taluka Lodhika, District – Rajkot and his brothers Kalubhai and Muljibhai as well as of one person, named as, Keshu Alarakha Sandhi of the same village wanted to grow eucalyptus in their respective land. They all wanted to cultivate and implant eucalyptus in their fields situated at village Jashvantpur. Vallabhbhai Savdasbhai Ramani for that purpose approached office of the Forest Department situated at Junction plot, Rajkot. All the four persons in written had preferred separate applications for distribution of eucalyptus saplings to them. Complainant – Vallabhbhai Savdasbhai Ramani himself approached with four applications at Junction Plot office of the Forest Department. He tendered those applications and inquired from the office that when such saplings were to be allotted to them. He came to know that the applications preferred by them would be forwarded by Junction Plot office to their Divisional Office situated at Multistoreyed Building, 5th Floor and complainant was required to inquire from that office in respect of saplings of eucalyptus. On 17th of July, 1985, complainant Vallabhbhai Savdasbhai Ramani had been to Divisional Office of the Forest Department situated in Multistoreyed Building. On enquiry, he came to know that the allotment of such saplings was done by appellant No.1 an employee of the Forest Department. The complainant thereafter

approached appellant No.1 and inquired about his applications as well as other applications. During conversation it was found that the applications preferred by the complainant and other persons had been received by the office of the appellant No.1. The complainant inquired that when such saplings were likely to be allotted to them. Appellant No.1 in reply stated that the saplings, as per the demand of the applicant and other persons, could not be allotted to them because there was scarcity of said saplings. Appellant No.1 stated that, at the most, one person could get 500 to 700 saplings where the complainant had demanded about 3000 saplings. The complainant, therefore, said to appellant No.1 that by merely 500 to 700 saplings, even one bigha of land could not be cultivated. Complainant requested appellant No.1 to arrange some more saplings. The appellant No.1 thereupon replied that on behalf of the applicant, he would request his superior and shall try to get as many more saplings as possible, but for that, the complainant would have to pay something to appellant No.1. Therefore, complainant said that he would obey the wish of the appellant No.1 and he would be pleased. The appellant No.1 thereupon stated that he would get allotment of 3000 saplings per application, out of which, 1,000 saplings would be free of charge as per the Government Resolutions and for remaining 2,000, each applicant would be required to pay amount of 0005 ps per saplings and that amount would have to be paid to the government by challan in State Bank. The appellant No.1 explained to the

complainant that over and above this amount, the complainant was required to pay some more amount to appellant No.1. After some time, appellant No.1 filled-in challans for each of the four applications in four copies and directed the complainant to pay the amount of saplings in State Bank of Saurashtra, situated at Shastri Maidan at Rajkot. The copies of those challans were delivered by appellant No.1 to the complainant and he asked that what amount would be paid to him. The complainant replied that he would pay the amount which might be demanded by appellant No.1. Thereafter the complainant left the office of the Forest Department and since it was 5.00 p.m., the bank was closed he went straight to his village. At his village, he discussed the matter with his two brothers and Keshu Alarakha Sandhi and stated that some amount would have to be given to the appellant. All the three persons authorised the complainant to make payment to appellant No.1. Thereafter two days, according to complainant, there was rain and he could not go to Rajkot for paying amount by challans in Bank and on 20th of July, 1985, complainant visited Rajkot and paid Rs. 400/- by challans in State Bank of Saurashtra for the saplings of eucalyptus for four applicants. After depositing the amount by challans in the Bank, with the copies thereafter he visited appellant No.1 and handed over those copies to appellant No.1. The appellant No.1 stated that the orders would be passed after his superior resumed the office. Thereafter, the complainant was called out of the office by appellant No.1 and stated to the

complainant that what happened about the amount to be paid to him. The complainant replied that the appellant No.1 would be paid. Thereupon, appellant No.1 demanded Rs. 200/- from complainant and stated that the saplings of eucalyptus were less in quantity and were in scarcity even though he arranged 12,000 saplings for four applications. The complainant thereupon stated to the appellant No.1 that he had not brought that amount with him and he was having only Rs. 20 to 25 and that he would pay appellant No.1 thereafter, but the appellant No.1 stated that after the work was done, none cared to make payment and, therefore, he directed complainant to visit the office on next Monday i.e. 22nd of July, 1985 and to make payment of Rs. 200/- to him and obtain orders for the allotment of saplings. Complainant agreed to this arrangement. However, complainant thought that it was not proper to surrender to illegal demand of the appellant No.1 and, therefore, he reached at the office of Anti Corruption Bureau at Rajkot. At about 16.00 hours he declared his complaint and the fact that the appellant had demanded Rs. 200/- for the orders of allotment of eucalyptus saplings and that he was called by appellant No.1 on 22nd of July, 1985, during office hours. Police Inspector Mr. Bharatsinh Prabhatsinh Sarvaiya recorded the complaint of the complainant and the complainant was directed to reach at ACB Office on 22nd of July, 1985 at about 9.30 a.m. with Rs. 200/-. The applicant was warned not to say anything about this to anyone. On 22nd of July, 1985, as per direction, the

complainant reached ACB Office. PI Mr. Bharatsinh Prabhatsinh Sarvaiya arranged two panchas, one Mr. Dipak Harshadbhai Trivedi and second Sureshkumar Karsandas Mardia for arranging trap. Both the panchas expressed their willingness to cooperate as panchas. Both the panchas were searched by PI Mr. Sarvaiya and were brought to the office of the ACB. Both the panchas and the complainant were introduced to each other. All of them thereafter introduced to other members of the raiding party. The complainant thereafter reported the facts of his complaint to panchas and others and both the panchas signed on the written complaint given by the complainant on 20th of July, 1985. Thereafter, complainant presented Rs. 200/-, two currency notes denomination of each of Rs.100/-. Numbers of both the notes were recorded in the panchnama. On searching of the person of the complainant, he was found wearing chorni (a small trouser ordinarily worn by peasant) and paheran (a kind of shirt ordinarily worn by peasant). This is a farmer dress in that area. The complainant was wearing undershirt known as `bandi'. On his shirt, there were two pockets, and out of this, the left pocket was empty while in right hand side pocket, there were currency notes of Rs. 40. One diary and handkerchief were found in the pocket of undershirt `bandi', which were kept as it where, and the amount of Rs. 40 found from `bandi' were placed in the pocket of `bandi'. Thereafter panchas took search of persons of all raiding parties and also offered the search of their person. The property of anthracene power and

ultra violet lamp were explained by Head Constable Indulal Trivedi and he thereafter took out one bottle of anthracene power and ultra violet lamp. Head Constable Indulal extracted powder by cotton pod from the bottle and placed the same on one blank paper. Thereafter, both the currency notes were smeared by anthracene powder through cotton pod by Head Constable Indulal Trivedi. The hands were seen in natural light, but no marks were visible, but while those notes were seen in the light of ultra violent lamp, on both sides of the notes, anthracene powder marks were visible, and on both hands of Head Constable Indulal also marks of anthracene powder were found. Indulal thereafter pull out both the notes and placed the same on left hand side pocket of the complainant Vallabhbhai. Thereafter Head Constable Indulal destroyed the blank paper and torn the same. The anthracene powder bottle was secured in a cup board and he washed his hands by soap. Thereafter hands of all of them were seen in the light of ultra violet lamp but nothing was found. PI Sarvaiya thereafter explained them to go to the Divisional Office of the Forest Department, situated at Multistoreyed Building and they were to alight from the jeep at some distance from the said building. Complainant was directed that with the company of panch No.1 he was to go to the said office and discuss with the appellant about quota of saplings and if appellant again demands for bribe in pursuance of his earlier demand, then the complainant was to give appellant No.1 the muddamal notes kept on his left

side pocket of paheran. He was also directed that if appellant No.1 accepted the said amount, then the complainant was to come out of office and give signal by moving his hands in a manner which might be seen by panch No.2 and other persons of raiding party who were to be stationed nearby the office of appellant No.1. The complainant was further directed not to touch the amount of muddamal unless the same is demanded by the appellant No.1. Panch No.1 was explained that he was to remain present with the complainant and attempt to hear the conversation which might take place between the complainant and appellant No.1 and to notice the passing of the amount, if any, between them in the secrecy of trap. It was pointed out that panch No.1 would also wear paheran and chorni. Those clothes were called for by Mr. Sarvaiya and panch No.1 changed his clothes into paheran and chorni, which is the traditional dress of the framers of that area. It was explained to panch No.1 if appellant No.1 asked about him, he should explain that he was a farmer of the village of the complainant. The raiding party members and panch No.1 were also instructed accordingly. At about 11.15 a.m. all of them reached near Multistoreyed building and jeep was parked near Jubli Chowk near Mohit Hotel, and all of them alighted from the jeep. From there, complainant and panch No.1 started walking towards the said office of the appellant No.1. Complainant and panch No.1 approached appellant No.1 in his office and appellant No.1 was sitting at his table. Two other employees sitting in the

office were watching the rally which was passing on road in agitation of reservation policy. At the time one more person, who turned out to be appellant No.2 thereafter, was standing near the table of appellant No.1. Complainant inquired about the saplings of eucalyptus from appellant No.1. Appellant No.1 directed the complainant to wait for sometime and, therefore, they sat on a wooden bench kept in the said office. In the meanwhile, appellant No.1 and appellant No.2 who was standing near the table of appellant No.1, talked amongst themselves in low tone. Thereafter, appellant No.1 stood up from this chair and gathered some papers and asked complainant to come out for a talk. He asked appellant No. 2 also saying that Jadeja come out. Therefore, both the appellants as well as complainant and panch No.1, all the four, came out of the office of the appellant No.1 to the lobby of the office. They were walking in the lobby and at that time appellant No.1 stated to the complainant that he had been to obtain orders of eucalyptus saplings, but had he brought the amount as decided earlier. Complainant replied that he had brought Rs. 200/- with him. Thereupon, appellant No.1 stated that his papers were ready and offered the papers to the complainant, which complainant took in his left hand and appellant No.1 further stated to the complainant that to give the amount of Rs. 200/- to appellant No.2. Therefore, complainant took out the amount of Rs. 200/- i.e. muddamal notes from his bandi by his right hand and gave the same to appellant No.2, who accepted that amount by his right

hand. At that time, in the said lobby, the raiding party members and panch No.2 were standing and they saw this and rushed near those four persons. P.I. Sarvaiya introduced himself to both the appellants and asked their names and addresses. Both the appellants were directed to remain as they were. The PI Sarvaiya asked the appellants that for what purpose had they accepted the amount. Both the appellants upon this question, were frightened and could not reply. PI Sarvaiya directed appellant No.2 to keep the amount as it was in the hand of appellant No.2. Thereafter, both the appellants and all the raiding party members went in the office of appellant No.1, where Head Constable Indulal was directed to execute ultra violet lamp experiment. Except the hands of the complainant and appellant No.2, the hands of all were seen in the light of ultra violet lamp, but no marks were seen in the hands of any of the members. Thereafter, panch No.1 was directed to take the currency notes of muddamal from the hands of appellant No. 2 and thereafter hands of appellant No.2 were examined in ultra violet lamp and it was found that right hand of the appellant No.2 was tainted with anthracene powder marks. Body of appellant No.2 was examined in light of ultra violet lamp, but nowhere any marks of anthracene powder were found. Thereafter, hands of the complainant were examined in ultra violet lamp. It was found that in the tips of the fingers and on the tips of the thumb of the complainant anthracene powder marks were visible. On examining the clothes of the complainant, anthracene

powder marks were visible on left side pocket of paheran. The currency notes which were recovered from appellant No.2 were also examined in the light of ultra violet lamp and it was found that on the hands of panch No.1 and on the currency notes, anthracene powder marks were visible. Thereafter, the number of both the currency notes were compared with the first part of panchnama and they were tallied. Those notes were seized and the papers given by appellant No.1 to the complainant, which were orders for the allotment of saplings of eucalyptus, were also seized. Both the appellants were searched in the presence of panchas. The receipt of seizure of currency notes from appellant No.2 was given to him and in the office copy, a signature was obtained. A panchnama was drawn for the said procedure which was over at about 14.30 hours. Appellant No.2 was arrested on the spot and was brought to the office of Anti Corruption Bureau. A crime came to be registered and investigation was started. Steps were initiated to obtain sanction to prosecute appellant No.1 and on receiving necessary sanction, appellant No.1 was arrested and both the appellants were charge sheeted for the offences, as aforesaid.

3 A charge against both the accused came to be framed by learned Special Judge on 31st of December, 1987 vide Exhibit-13 in respect of above said charges, to which both the appellants pleaded not guilty.

4 The prosecution, therefore, was asked to prove the charge against the accused and the prosecution in all examined eight witnesses in oral evidence as under :

1) Vallabhbhai Savdasbhai, complainant, PW-1 (Exh.15)
2) Sureshkumar Karshandas Maradia, panch No.1, PW-2 (Exh.30)
3) Sugno Pohumal Chawla, PW-3 (Exh.32)
4) Dineshkumar Gopalbhai Kuril, PW-4 (Exh. 39)
5) Bipinkumar Natvarlal Gotech, PW-5 (Exh. 40)
6) Natvarlal Chunilal Thakar, PW-6 (Exh.43)
7) Ramniklal Sundarji Detroja, PW-7 (Exh. 46)
8) Bharatsinh Prabhatsinh Sarvaiya, PI, PW-8 (Exh. 50)

5 The prosecution also submitted documentary evidence as under :

1 Complaint dated 20.7.1985 – Exh.16
2 Order of allotment of Keshubhai Alarakha – Exh.17
3 Order of allotment of Vallabh Savdas – Complainant Exh. 18
4 Order of allotment of Kalu Savdas - Exh. 19
5 Order of allotment of Mulji Savdas – Exh. 20
6 Application of Kalu Savdas for allotment of saplings Exh. 22.
7 Pahnipatrak of Kalu Savdas – Exh. 23
8 Application of Mulji Savdas dated 8.7.1985 – Exh. 24
9 Pahnipatrak of the land of Mulji Savdas – Exh. 25

10 Application of Keshu Alarakha dt. 8.7.1985 – Exh.26

11 Pahni Patrak of the land of Keshu Alarakha – Exh. 27

12 Application of Vallabh Savdas – complainant dated 8.7.1985 – Exh. 28

13 Pahnipatrak of the land of Vallabh Savdas – Exh. 29

14 Panchnama - Exh. 31

15 Forwarding Letter dated 11.7.1985 for forwarding the applications by the Junction Plot Office to the Multistoreyed Building – Exh. 33

16 Extract of Challan Register - Exh. 34

17 Challan Number - Exh. 35, 36, 36 and 38

18 Compared extract of Nana Khedut Register of 36th Van Mahotsav of the Office of Rajkot – Exh. 42

19 Mota Khedut Register – Exh. 44

20 Appointment Order dated 16.6.1981 – Exh. 47

21 Copy of the order of transfer of accused No.1 Exh. 48

22 Sanction to prosecute accused No.1 – Exh. 49

23 Copy of seizure memo of currency notes – Exh. 51

6 After the evidence was declared over by the prosecution, both the appellants were asked about their explanation in respect of the circumstances appearing against each of the appellant. Denying the evidence in toto, appellant No.1 further explained in his further statement that the applications of the complainant and others were received in his Office on 17th of July, 1985, his Superior Officer Mr. Kuril directed him to allot 1,000 saplings free and 2,000 saplings on payment and to allot saplings after payment is made through challans. The complainant

had demanded 7,000, 4000 and 3,000 saplings and he expressed his inability to allot saplings in that quantity. It is the case of the appellant No.1 that on refusal by him, the complainant got angry and attempted to pressurize appellant No.1 saying that he was Upsarpanch of village Jashvantpur and he would see as to how he would not get the quantity of saplings as desired by him and thus complainant had given threats to him. It was also admitted by him that on 20th of July, 1985, the complainant had visited his office and delivered copies of the challans in token of having paid the amount to the government and he demanded allotment orders. Appellant No.1 further stated that he said to the complainant that no officer to issue order was available in the office and the complainant was asked by him to wait for some time and after concerned officer come to the office, he would take the signature of the said officer and deliver the orders. Appellant No.1 further stated that the complainant replied that he wanted to go out and he was in hurry and demanded orders then and then with angry mood. The appellant No.1 further stated that thereafter when the complainant left the office was not known to him. The appellant No.1 further explained that on 22.7.1985, complainant had been to his office and asked for the orders for allotment of saplings and replied that those orders were ready and handed over the orders to the complainant in his office. The appellant No.1 further explained that thereafter the complainant went out and came again with P.I. Sarvaiya and one person wearing dress of peasant

and he was apprehended from ground floor and was brought to the 5th Floor. The appellant No.1 further explained that panch No.1 was serving in government college and being public servant he was deposing falsely against him to help the prosecution. He also further stated that panch No. 1 was the neighbour of P.I. Sarvaiya and was under the pressure deposed against him. He further stated that under the scheme of Van Mahotsav, wherein the saplings were to be allotted was entirely looked after by Mr. Kuril, who was his superior. He further stated that Mr. Kuril was out of the office and the signature on the challans were taken of one Mr. Budhwani on that day. He further stated that the complainant, being Upsarpanch and politician, had demanded first 7,000 saplings, then 4,000 and then 3,000 saplings for each applicant. He further explained that the complainant had given threats, but it was not within his power to allot that much saplings to the complainant and other persons, the complainant lodged false complaint against him and false raid was carried out.

7 Appellant No.2 in his further statement explained that he had gone to the office of the appellant No.1 on 22nd of July, 1985, for the first time for obtaining saplings of eucalyptus. He stated that he did not know appellant No.1 before 22nd of July, 1985 nor he was connected with appellant No.1. He approached appellant No.1 only for obtaining information as to the procedure for allotment of eucalyptus saplings, and at that juncture, the

complainant came there and inquired from appellant No.1 about his allotment of saplings, and in reply, appellant No.1 delivered to the complainant orders of allotment of saplings and complainant attempted to give currency notes to appellant No.1, but he did not accept the same and appellant No.1 uttered that the other person with the complainant was clerk in the College and thereafter appellant No.1 had left his office room. The appellant No.2 further explained that, thereafter, complainant and the other person accompanying him, followed appellant No.1. Then, thereafter, he also came out of that office and went down through the lift as he was trying to go down, complainant and panch No.1 instantaneously put the currency notes in his hands and before anything would happen, a raid was carried out by PI Sarvaiya. He further stated that the complainant had conspired to trap appellant No.1 and he was innocent and fell prey to that conspiracy. He further stated that panch No.1 supported the prosecution because of the pressure of Police Inspector Mr. Sarvaiya, and being government servant, supported the prosecution case.

8 Thereafter, both the counsels for the parties were heard in detail by learned Special Judge and after hearing both the parties, the appellants came to be convicted and sentenced as aforesaid by learned Special Judge and, hence, this Appeal.

20.09.2006

9 It is necessary in brief to state the general tenor of the evidence of the prosecution case.

9.1 PW-1 Vallabhbhai Savdasbhai stated in his deposition that he owns agricultural lands at village Jashvantpur and at the relevant juncture he was Vice-Sarpanch of the village. He intended to cultivate in his field and, therefore, he contacted Rajkot Junction Plot Office of the Forest Department along with applications of his two younger brothers and one Keshu Alarakha Sandhi and with his application and necessary extract of revenue record. He stated that these applications were to be forwarded to the Head Office at Multistoreyed Building and he should inquire about the applications at Divisional Office. He stated that thereafter after 8 days, he visited the office of the Forest Department in Multistoreyed Building and found that the applications for saplings were to be processed by appellant No.1 and hence he approached appellant No.1. He stated that he had demanded 7,000 saplings of eucalyptus, his brother Muljibhai had demanded 4,000, his other younger brother had demanded 4,000 and Keshu Alarakha Sandhi had requested for 3,000 saplings. He stated about conversation took place between him and appellant No.1 that, first appellant No.1 shown his inability to allot that

much quantity of saplings and thereafter appellant No.1 took him out of the office for taking tea, where he stated that he would try to obtain as many more saplings as possible from his superior officer, but the complainant would have to understand something. Meaning thereby that, appellant No.1 was to be paid something. He further stated that at the instance of appellant No.1 he made changes in his application and restricted the demands upto 3,000 saplings, for each application and according to the instruction of appellant No.1, the challans filled-in by appellant No.1 in four copies were obtained by him to make payment in Bank for 2,000 saplings per application as 1,000 saplings were to be given free while remaining 2,000 saplings were to be costing 00.05ps per sapling. According to him, this was on 17th of July, 1985. He stated that in the evening, the bank was closed and challans could not be deposited and thereafter he went his village persuaded other three applicants and they agreed to pay to appellant No.1 for allotment of saplings. He stated that thereafter for two days, he could not go to Rajkot as there was rain and on Saturday i.e. 20th of July, 1985, he deposited Rs. 400/- in State Bank of Saurashtra through challans and in token of having paid the amount, the copy of challans which were given to him, were kept by him. He stated that thereafter he again approached appellant No.1 and requested for the

allotment of saplings. He stated that appellant No.1 told him that in all the appellant No.1 had arranged 12,000 saplings for them and he was required to pay Rs.200/- to appellant No.1. At that juncture, according to complainant, he had no such amount and requested appellant No.1 that he would make payment thereafter and the allotment orders for the saplings be delivered to him. He further stated in his deposition that thereupon the appellant No.1 stated that after the work was done, nobody cared to come and make payment and, therefore, appellant No.1 directed him to visit the office on Monday and bring the money and to obtain orders for allotment. He stated that he felt that it was not correct to give amount in bribe and, therefore, he approached on that very day Anti Corruption Bureau Office, where PI recorded his complaint. He produced the said complaint on record at Exh.16. The next day was Sunday and, therefore, PI instructed him to come again at ACB Office on Monday i.e. on 22nd of July, 1985 at 9.00 a.m. along with the amount of Rs. 200/-. He stated that he again discussed with his brothers and Keshu Alarakha and stated that each would have to pay Rs.50/-. He stated that thereafter on 22nd of July, 1985, Monday, he visited the ACB Office and met PI, who made him sit in the office. PI called panchas and thereafter he stated about the introduction of panchas with other members and complainant and the

experiment to be carried out on ultra violet lamp and placing currency note on his left side paheran pocket and muddamal notes were smeared by anthracene powder by Indulal, Head Constable. He further stated that according to instructions given by PI, all of them went in jeep near Multistoreyed Building, where all of them alighted, and as per instructions, he and panch No.1 went to the office of appellant No.1 and approached appellant No.1 while other members of raiding party were in lobby. He stated that panch No.1 had changed his dress from shirt and pant to paheran and chorni, so the panch No.1 might not be recognised by anybody. He stated about the instructions given by PI to panchas and the raiding party members as well as to him. He stated the facts about the first part of the panchnama. He further stated that he and panch No.1 approached appellant No.1, who was sitting on his chair and other two employees sitting in the office were watching a rally from the window and were standing near the window and that rally was passing over the road, which was against the roster policy of the government. One more person was standing near the table of appellant No.1 and who turned out to be appellant No.2 thereafter. He stated that he inquired from appellant No.1 that what happened to his allotment of saplings. The appellant No.1 replied that the complainant should wait for some time and, therefore, they sat on a

bench kept near the table of appellant No.1. He stated that thereafter appellant No.1 and appellant No.2 whispered amongst themselves. Thereafter appellant No.1 rose from his table and asked complainant to come out and also asked appellant No.2 by saying that Jadeja come out. He stated that therefore all the four persons i.e. complainant, panch No.1 and both the appellants came in lobby and were moving in the lobby. At that juncture, appellant No.1 told to the complainant that he had come to obtain saplings but whether he had brought the amount as per earlier understanding. He stated that he replied to the appellant No.1 that he had brought Rs. 200/-. He stated that thereafter appellant No.1 stated that take your papers and thereupon the papers which were in his hands, were delivered to the complainant, which he accepted in his left hand. He further stated that appellant No.1 also asked him to give amount to appellant No.2. He stated that therefore he took out the amount by his right hand and gave the same to appellant No.2 who accepted the amount by his right hand and kept the amount in the hand only. At that juncture, according to complainant, the raiding party members, including PI, reached near them. He stated that PI introduced himself to both the appellants and asked their names and further asked that for what purpose they had taken money and where was the money. He further stated that on asking by PI, the

appellants were frightened and could not give reply and PI gave direction to keep the money as it where. He further stated that thereafter all of them went in the office of appellant No.1 and Head Constable Indulal executed the experiment of ultra violet lamp to find out anthracene powder marks. In both the hands of appellant No.2 and in the hands of panch No.1, anthracene powder marks were seen and the amount was recovered from appellant No.2 by panch No.1. Seizure memo was prepared and was handed over to appellant No.2. Witness further stated about the experiments and drawing of the panchnama. At that juncture and about verifying the numbers of the notes recovered from appellant No.2, which were tallying with the first part of the panchnama. He produced on record from Exhibits 17 to 20 orders for allotment of saplings in respect of the complainant and others which were handed over to him by appellant No.1. He also produced on record the applications filed by all the four applicants and the revenue extract from Exhibits 22 to 29. In his cross-examination, it was asked that applicant Keshu Alarakha Sandhi was doing labour work in his filed and was to pay his labour charges. He denied this allegation. He further stated that he could not say certainly but he went to Junction Plot Office approximately on 8th of July, 1985. He was shown interpolations and corrections made in the applications in

the quantity of saplings demanded by the applicants. He was asked about the contents of his application. He made clarification in para-17 of his deposition in this respect and stated that whatever over-writings had been made in each application, were made at the instance appellant No.1. He denied the allegation that those over-writings in the applications were made on his own and not at the instance of appellant No.1. He was asked about the dates mentioned in the challan for depositing the amount in the Bank. In two of the challans, the dates were interpolated while other two challans were not dated at all. This was asked in respect of the date of filling of the challans. In para-18 he stated that he could not remember whether the certified copies of Form No.8 was required to be produced, but he produced Form No.7/12. He stated that he could not say in application who identified the left hand thumb impression of Sandhi Alarakha. In para-20 he stated that it did not happen that he visited Rajkot on 11th of July, 1985 and it did not happen that challans were filled in on 11th of July, 1985. He stated that challans were filled in on 17th of July, 1985 but were not returned back on that day. He did knew on 17th July itself that 2,000 saplings were to be allotted on payment while 1,000 saplings were to be allotted on free of cost. He stated that on 17th when he came for filling of the challans, he did not know what amount was to

be deposited. He stated that he visited the office of the appellant after 2.00 p.m. on 17th and thereafter he took challans with him at his village Jashvantpur. He stated in para-21 that he did not know that the saplings were to be distributed according to availability of saplings. About the location of the office, he has stated that the office of Forest Department was situated on 5th Floor and on entrance, there is one chowk. He denied the suggestion that the office of the appellant No.1 was at a distance of 40 feet from the lobby. He stated that on both sides of lobby, offices were situated and at the end, office of the appellant No.1 was situated. He was asked about the location of the office in para-22 of the cross-examination. In para-23, the contradiction about 17th of July 1985, in respect of the fact that on that day appellant No.1 asked him to go out of the office and they took tea was asked. He stated that he had stated before the police in statement about this fact. Then he stated that he did not state before the police and in his complaint that appellant No.1 told him on 17th of July, 1985 to come out of the office and they took tea. Then contradiction asked is about the fact that whether appellant No.1 had told the complainant about request to be made before to his superior for the allotment of saplings in more quantity. This contradiction is in respect word lobby. It appears that in cross-examination in para-23, the suggestions were made

that on 17th conversation took place between the complainant and appellant No.1 did not take place in lobby as deposed by him in his chief-examination because such fact was not mentioned in his complaint and in his statement before the police. He admitted that in his complaint or in his statement before the police he did not say that he made interpolations and over-writings in the application at the instance of appellant No.1. He also admitted that he did not state in the complaint or before police that accused – appellant No.1 stated him that 3,000 saplings were arranged for each of them. He admitted that in his complaint or in his statement, he did not state that in respect of the demand of the appellant No.1 he stated that he had only Rs. 20 to 25. Again in para 24, a contradiction is asked. In para-25 of cross-examination, he stated that his village was situated at about a distance of 11 kms from Rajkot and he had visited Rajkot on 20th of July, 1985 on a bi-cycle and after depositing the amount through challans in bank, he had visited Forest Office and approached appellant No.1 at about 2.30 p.m. He admitted that in his complaint, he did not state that appellant No.1 stated that after his superior officer reached at the office, the orders would be passed. He stated that appellant No.1 did not demand bribe amount in the office but he demanded bribe in the lobby and in the lobby he stated hat he had arranged

about 3,000 saplings for each of the application and he had forwarded the applications to his superior and this fact he had not stated in his complaint. He had not stated in the complaint about the saying of appellant No.1 that he had arranged for 12,000 saplings in all. He stated his ignorance about who should pass the orders for allotment. In para - 26 of his deposition, he stated that at about 4.00 p.m. he reached Rajkot ABC Office and declared his grievance. Thereafter at about 5.00 p.m. he returned to his village on bi-cycle. In para - 27 he stated that at about 9.30 he reached on bi-cycle at Rajkot ACB Office and thereafter PI Sarvaiya arranged two panchas within 15 minutes and thereafter Head Constable Indubhai was called and other staff members were there. In para 28 of his deposition he stated that on 22nd of July, 1985, he had put on paheran and chorni and had no shirt. He denied the fact that the amount was put in the pocket of his underwear. He stated that panch No.1 had worn pant and bush shirt, but it was changed into paheran and chorni. He stated that chorni and paheran were given to panch No.1 by PI Sarvaiya for the purpose that he should not appear as panch. He denied the suggestion that when panch No.1 and he approached appellant No.1, on seeing panch No.1 appellant No.1 stated that panch No.1 was working as clerk of a college and that he had studied with him. He stated that before

panch No.1 changed the clothes, he was searched, but nothing was found. He denied other suggestions. In para-29, the complainant was asked about the situation of the office of appellant No.1 and whether how many employees were present and whether any name plates were there. He confirmed the instructions given by PI while drawing panchnama Part-I. He denied the suggestion that for the success of trap, at any rate, panch No.1 was attempted to be introduced as a farmer. On that day when he approached appellant No.1 , appellant No.1 and other couple of employees were present in the office and were watching a rally passing on the road from window. He deposed that the experiments in respect of anthracene powder marks were not shown by PI Sarvaiya to other employees present in the office. Then he was asked about the situation of bench, on which he and panch No.1 had sat. He stated that he did not offer any signal because it was not necessary as the raiding party members reached near them. He denied the suggestion that as soon as he entered in the office of appellant No.1, appellant No.1 came out of the room. He denied the suggestion that he sat in the office for some time and thereafter along with appellant No.1 came out of the room. He stated that it did not happen that first appellant No.1 came out of the room, half minute thereafter appellant No.2 came out from the room and half minute later he and

panch No.1 came out of the room. He stated in para - 30 that the lobby is about 80 feet. There are lifts situated on both sides of lobby. He denied the suggestion that coming out of the room of appellant No.1, since lift was not available, started coming down through stairs and appellant No.2 was standing near lift and parapet, while he stated that the amount was accepted on northern portion and not by standing, but all of them were walking. He stated that he delivered the amount to appellant No.2 because appellant No.1 directed so. He stated that he was not instructed to act as per the instructions of appellant No.1 He denied the suggestion that he had filed complaint and because appellant No.1 refused to take amount and on anticipation that some action could be taken against him, he forcibly delivered the amount to appellant No.1 in his hand. In para – 31 he admitted that between him and the Sarpanch some cases in Sessions Court were going on. In para - 32 he stated that the amount paid for saplings allotted to Keshubhai was to be given to him for labour charges. He admitted that he did not inform Keshu Alarakha about laying of trap. He denied the suggestion that because the quantity of the saplings was not allotted to him as per his demand, he filed false complaint in conspiracy. This is all the evidence of the complainant.

9.2 PW - 2 Sureshkumar Karshandas Maradia, examined at

Exh. 30, stated in his deposition that on 22nd of July, 1985 at about 9.45. he was passing through near Saurashtra Emporium on motorcycle, he was stopped by P.I. Sarvaiya and asked if he was willing to cooperate in a trap. He indicated his willingness. In the meantime, second panch Dipakbhai Trivedi also passed through near and he also volunteered to assist in government work and thus both of them were taken by Mr. Sarvaiya at Anti Corruption Office. He stated about the introduction with ACB staff and complainant and the experiments executed about anthracene powder and ultra violet lamp. He stated that the amount of Rs. 200/- in two notes, each of denomination of Rs. 100/- was given by the complainant, which were smeared with anthracene powder and were placed in left side pocket of paheran. He stated about the instructions and directions given by PI to both the panchas, complainant and ACB staff members. He stated that to keep secrecy of the trap, PI Sarvaiya arranged to change his dress from shirt and pant to chorni and paheran. He stated that first part of the panchnama was over at 11.50. He stated that accordingly they then reached near Multistoreyed building in a jeep and he and complainant approached appellant No.1 in his office. He stated that complainant asked about appellant No.1 that what had happened about his saplings. Appellant No.1 stated that all the four orders of allotment of saplings

were ready and asked them to wait and sit on a bench which was kept there. He stated that thereafter appellant No.1 and appellant No.2 whispered some conversation amongst themselves and thereafter appellant No.1 gathered some papers from his table and came near them and told to come out for a talk. He stated that appellant No.2 was called out by appellant No.1. He stated that thereafter four of them talking to each other came in lobby where appellant No.1 asked the complainant that if he had come to take orders of allotment, but in pursuance of the earlier understanding, whether complainant had brought the amount for bribe. Complainant replied that in pursuance of earlier talk, he had brought Rs. 200/-. He stated that thereafter appellant No.1 instructed complainant to take the orders from him and give the amount to appellant No.2. He stated that this conversation between appellant No.1 and complainant took place in lobby during they were walking. He stated that thereafter complainant received the orders given by appellant No.1 and took out the amount from left pocket of his paheran by left hand and gave it to appellant No.2, who accepted the said currency notes by his right hand. He stated that this also occurred in lobby while all of them were walking. He further stated that on the end of lobby, PI Sarvaiya was standing along with his staff and panch No.2. He reached near them and introduced himself to both the

appellants and asked the names of both the appellants. The witness further stated that thereafter PI Sarvaiya asked both the appellants that for what purpose they had taken money. The appellants were frightened. He stated that thereafter PI Sarvaiya directed both the appellants to remain as they where. He stated that appellant No.2 showed the currency notes which he had in his right hand, but he could not speak anything. He further stated that all of them thereafter went to the office of appellant No.1 where the ultra violet lamp and anthracene powder experiments were executed by Head Constable Indulal. Mudammal notes were recovered from appellant No.2 and therefore the hands of appellant No.2 tainted with anthracene powder marks. He further stated that the hands of complainant and his upper left pocket of paheran also found tainted with anthracene powder marks. He stated that the numbers of the notes recovered from appellant No.2 were compared with first part of panchnama and they were tallied. He has stated that a panchnama was drawn for all these procedure and had signed that panchnama which he produced at Exh. 31. He stated that before this incident, he had never gone to the office of appellant No.1 and did not know him. He stated that thereafter they all went to ACB office and after changing cloth, he went his home. In his examination in cross, he denied that he stated everything in chief as he had

crammed everything. He admitted that on previous day when he attended the court, he had gone through his statement before police. He denied the suggestion that whatever he had stated in his examination-in-chief was verbatim narration of panchnama. In para-11 he was asked about what was his education and how was he employed. He admitted that in his police statement he stated that he was serving as a Clerk. He stated that for last 18 years, he had been staying in Rajkot and was serving in Kotak Science College. Many students during his time as such came in to his contact, but he could not recognize all of them. Thereafter, the questions were asked about where was he staying and the nearness of his residence with the residence of PI and other police officers. This is all asked in paras 12 and 13 in examination-in-cross. In para-14, he was asked about how was he selected as a panch. That while passing through Saurashtra Emporium, he was stopped by P.I. and near Saurashtra Emporium there was a traffic point and he was required to stop there. In para - 15 he stated that other panch Dipakbhai Trivedi also while he was passing through on his Suveg Motorcycle and was coming from Jubli, he was stopped by PI Sarvaiya. In para - 16 he stated that he did not know that when he reached at ACB Office. He stated that the dress chorni and paheran was comfortable to him. He stated that he did not object of wearing of chorni and

paheran and did not ask that whose clothes were given to him. In para - 17 of his cross-examination, family history was asked wherein his all family members were employed in government job which he stated in para - 18. He stated that before this incident, he never attended ACB Office any time. He stated his ignorance as to how many clerks were employed by ACB Office from his college. He stated his ignorance that Anti Corruption Bureau had made some inquiry in his office before the incident. He stated his ignorance as to whether somebody from Saurashtra University had been to his college for some inquiry. In para - 19 he denied that any inquiry was going on in Chemistry Department of Kotak Science College. Again in para-20, questions were asked about the relatives of the witness and where they were employed. In para – 21 he stated that for his official duty, he was required to go outside the town two/three times in a month and whenever he used to go outside the town, his TA Bill was prepared. He stated his ignorance about a clerk of his college who obtained fee from a student to appear in examination and did not give receipt. In para-22, he stated that PI Sarvaiya requested him to cooperate in government work and therefore he showed his willingness. In para-23 he stated that panchnama was prepared by Mr. Sarvaiya and was written by Constable Mr. Rana. Both the parts of the panchnama

were dictated by Mr. Sarvaiya and was written by Constable Rana. He stated that he asked the complainant that from where Rs.200/- were brought by him and he replied that he brought the amount from his house. He stated that the amount of bribe was to be given at any time during office hours. He was asked about how many offices were situated in Multistoreyed Building in this paragraph. In para-24, he stated that he was instructed by PI through panch No.1 that the amount of bribe was to be given to the appellant No.1 on demand only and when he accepted it, a signal was to be given to other persons. He admitted that the amount of bribe was not given in the office of appellant No.1 nor appellant No.1 accepted the amount of bribe. He admitted that he was accompanying with the complainant in the trap and he had put on chorni and paheran because he could not be recognized by anybody and secrecy of the trap be maintained. He denied the suggestion that even though he had put on chorni and paheran, appellant No.1 recognized him and told that he was a clerk in College. He denied that he changed dress only because to frame appellants in the said trap. In para - 25, it was asked about how they reached at the office of appellant No.1. He stated that it did not happen that on southern side lift near parapet while appellant No.2 was standing and complainant gave him money. He admitted that appellant No.2 accepted the

amount near parapet and appellant No.2 was standing near the lift at that time. Thereafter, the witness stated that, in fact, appellant No.2 accepted the amount while he was walking and that fact was incorrect. He could not remember that whether a chowk was situated near the lift. Thereafter he was asked about the location of other offices and the distances. In para-27 of his examination-in-cross, he denied the suggestion that many employees of the said building were watching a rally passing on the road. He denied the suggestion that appellant No.2 did not accept the amount, the complainant forcibly handed over that amount and as soon as the amount was thrusted in the hands of appellant No. 2, the raiding party members reached near them. He denied the suggestion that appellant No.1 asked the complainant came out of the office. He denied the suggestion that in the office itself, sitting near his table, appellant No.1 delivered all the four orders of saplings to the complainant. He denied the suggestion that appellant No.1 while walking in lobby, stated that take the orders of the saplings and give the amount to Jadeja. In para -28 he stated that raid was arranged at 12.20. At about 12.05 he and complainant reached in the office of appellant No.1. He stated that the conversation which took place, which he referred in examination-in-chief, took about one and half minutes. PI Sarvaiya did not ask that why the amount of

bribe was given to the appellant No.2 which was to be given appellant No. 1. This is all is the gist of the evidence of panch No.1.

Date: 21.9.2006

9.3 PW-3 Sugno Pohumal Chawla, is examined at Exh. 32 was serving as Deputy Conservator of Forest Department in Distribution Department. He deposed that at the relevant juncture he was serving at Rajkot and as Assistant Forest Officer Mr. Budhwani was serving. One Mr. D.G. Kuril was serving as Range Forest Officer in Planning Department. A scheme was provided in the name of Van Mahotsav by Forest Department. Mr. Kuril was in the charge of the scheme and in the assistance of Mr. Kuril, two Forest Officers Mr. Sharma – the present appellant No.1 and Mr. Bhatt were placed under Mr. Kuril. He identified appellant No.1 in the Court. He stated that under the scheme of Van Mahotsav, the Forest Department was allotting saplings and on making application in prescribed form, allotment was made. He narrated the procedure as to applying for the allotment and stated that applicant was to produce evidence of his agricultural land and as per the scheme, upto 1,000 saplings, no payment was charged and thereafter payment of 00.05 ps was charged for per sapling. The amount was to be deposited in the government through challans for these saplings. As per the procedure deposed by him, any sub

office received applications, the same were forwarded to his office and on receipt of said applications by his office, after inwarding the same, the same were placed before one Mahatosav Branch. According to the stock of saplings, allotment was made per application. In Van Mahotsav, Mr. Kuril and in his assistance appellant No.1 and one Mr. Bhatt were working. In their office, a register was kept about farmers in two categories, big and small, and those applications were noted in those register. This work was done by appellant No.1 and Mr. Bhatt. Mr. Kuril used to entrust the work of filling of the challans either to appellant No.1 or to Mr. Bhatt and after challan was prepared, Head Clerk or Planning Range Officer Mr. Kuril or Mr. Budhwani used to sign. Four copies of challans duly filled in, used to be given to the applicant and after making payment in bank, a copy of challan in token of having paid the amount would be delivered back by the applicant to his office and thereafter the orders for allotment of saplings were passed in three copies. He produced forwarding letter at Exhibit -33 by which the four applications of the applicant and others were received by his office. Vide Exhibit - 34 he produced a register wherein on 17th July, 1985, challan was given to applicants which was noted in the register. In para - 4 he stated that in the register of big farmers, the application filed by applicant – Mulji Savdasbhai was noted

in the register on 11th of July, 1985. He deposed that over-writings in the register were of the Clerk of Van Mahotsav Department. He produced concerned challans at Exhibits 35, 36, 37 and 38. In his cross-examination, challans Exhibits 35, 36, 37 and 38 were shown to him and were asked about the over-writing and interpolations made in those challans. He stated in cross-examination that the handwritings of challans could not be identified by him. He stated that the challan was to be filled in after it was decided that in what quantity saplings were to be given to each of the applicants. Challans were to be signed by an officer. He further deposed that Mr. Kuril, appellant No.1 or Mr. Bhatt, any of the three, were authorised to take decision as to allotment of saplings. He stated that if those saplings were available, then the decision was taken in the Branch of Mr. Kuril, but if the quantity of the saplings demanded was bigger, then the superior officer was required to take decision. He stated that he could not show whether during 17th of July 1985 to 20th of July, 1985 saplings were available or not. He stated that he could not say from the changes made in the applications in respect of quantity of the saplings that there was scarcity of the saplings at the relevant juncture. In respect of Exhibits 24, 26, 28 and 22, the applications preferred by the applicants, he deposed that no endorsement was made by any of the officers of his

Branch having accepted said applications. After receiving the applications from Junction Plot Office, they forwarded by a letter those applications to Divisional Office and consequently the applications were placed before the Planning Range Forest Officer Mr. Kuril and those applications were processed by Mr. Kuril and his two Assistants - appellant No.1 and Mr. Bhatt. He stated that he could not with certainty say that who in fact processed those applications out of these three persons. He admitted that the signature of the applications for the saplings was to be done by Mr. Kuril and a decision in respect of quota of allotting saplings was to be taken by Mr. Kuril and thereafter challans were filled-in and were given to the applicant for making payment. This is all the evidence of PW-3 stated in his deposition.

9.4 PW-4 Dineshkumar Gopalbhai Kuril, who was working as superior officer of appellant No.1 and Mr. Bhatt, has been examined at Exhibit-39. He stated that he received Exh. 33 letter on 16th of July, 1985. He also received applications at Exhibits 22, 24, 26 and 28, including annexures. He deposed that those applications were given to appellant No.1 for processing. He identified appellant No.1 in the court. He stated that appellant No.1 at this juncture was discharging duties as Forestry Extension Assistant, Van Mahatosav,

under his supervision. He stated that in common parlance, this designation was known as Forester. He stated that noting of the applications in register and to allot saplings to the applicants was done by Foresters, and if any complication had arisen, then the same was placed before him for guidance and opinion. In applications in question, when applications first received by him, there were no over-writings or erasing. He also stated that thousands saplings were given on free of cost and more than thousand saplings, was costing the applicants 00.05 ps per sapling. In this incident, the decision as to allotting quota of saplings was taken by appellant No.1. The challans were required to be filled-in by Foresters if the requirement of the applicant was more than thousand saplings and after depositing the amount through challans, the orders for allotment were passed, which were signed by him or by Assistant Conservator of Forest. It might be signed by Chief Clerk as well. In the applications in question at Exhibits 22, 24, 26 and 28, he signed the orders of allotment and the handwritings of the orders were of appellant No.1. He was shown those orders from Exhibits 35 to 38. Then he was asked about the question of raid. He stated that he reached office at 11.00 a.m. and was watching a rally from his table through a window. One person named as Patel was standing with him at the window. Then he was asked about how many

employees of his office had attended said rally. After 11.00 a.m. two persons appear to be the farmers had come to their office and were discussing something with appellant No.1. On the day of incident, appellant No.1 only was present as Forester in the office and the other Forester Mr. Bhatt was not present. In his examination-in-cross, he admitted that the appointment of appellant No.1 was made for the field work, but at the relevant juncture, he was working in Van Mahotsav Department. He stated his ignorance as to whether any such appointment orders were passed or not. He stated that Letter at Exh. 33 received by his office on 12th of July, 1985 and he initialed the same on 16th of July, 1985. Those papers were routed through the Conservator Mr. Chawla. He admitted that in the applications at Exhibits 22, 24, 26 and 28, no signature was made either by Mr. Chawla or by him. He was asked about some writings made in the margin of those applications in paras 7 and 8 and thereafter he admitted that what was written in the margin of the applications were the numbers of the register, in which those applications were noted. In para-9, he stated that in applications, below the writings in the margin, nobody had signed. In para-10, he deposed that in his office muster roll for the attendance of the employees was kept and from that muster he could say who were present and absent on 22nd of July, 1985. He stated that his statement

was recorded by IO and those applications were shown to him at that juncture. He could not say that how the dates were interpolated. He categorically stated that there were no interpolations when he first received those applications. In para-11 he stated that he could not say that applications were in whose writing, but endorsement made below each application to the effect that "allotted" and the detail thereof including the details of the challan of State Bank of Saurashtra were in the hand writing of appellant No.1. Except this hand wring, he could not say in whose hand writing were there in the applications. In para-12 he stated that he could not say in each application, how much saplings were demanded by each applicant, but he stated that in the orders passed for the allotment from Exhibits 17 to 20, handwritings of the orders pertain to appellant No.1. He stated that he had not undertaken any study in identifying hand -writing. He denied the suggestion that in the applications, erasing word "Punitnagar" and substituting word "Patvad" were in the hand writings of the appellant No.1 and except that, none of the handwritings were of appellant No.1. In para–13, he stated that in challans, Conservator Mr. Budhwani signed. Then he was asked about the interpolation made in the dates of the challans. In Exhibits 37 and 38 challans, there were no dates. In para -14, he stated that on the day of incident, his table was near

the table of Deputy Conservator of Forest. In para-14 again he stated that on the day of incident, he was present in the office where appellant No.1 was sitting. He stated that he was watching the rally by sitting at his chair. Thereafter, he amended that he saw that rally by standing at the window. In nearby table appellant No.1 was sitting and Mr. R.G. Patel was standing before him near the window. Two persons, appear to be as farmers, who were conversing with appellant No.1. Then he was asked about the location and about the conversation took place between appellant No.1 and appellant No.2, but he stated that his ignorance in this respect. He was asked about how many employees were joined in this rally and he stated his ignorance. He stated that he came to know about the incident when ACB employees gone to his office along with appellant No.1. at that time, he was watching rally from the window. He was not called to watch the experiments executed in respect of anthracene powder and those experiments were not executed in his presence. This is all the evidence of PW-4 Mr. Kuril.

9.5 Bipinkumar Natvarlal Gotecha, PW-5, Exhibit - 40 an ex-employee of the Forest Department stated that from the Polythene Bag Factory Branch of Forest Department, he was given on loan service to the concerned department. On the

day of incident, he was working in the same room in which the appellant No.1 was sitting and was on duty. At that juncture, he was not having any decided assignment and he was on loan service and was discharging the duties as he was ordered to do. He stated that Letter Exh. 33 had come to his table along with annexures. He noted the same in the register and he deposed about the details of noting the application in the register which he produced at Exhibit 41. He stated that those endorsement were made in his hand writing. At page 27 at No. 29, entry in respect of Mulji Savdas was entered by him wherein 3000 saplings were granted to him and entry made in respect of Mulji Savdas was thereafter erased which he produced at Exhibit – 42. He stated that the erasions made in Exhibit - 42 was made by him and that he did on account of and in pursuance of the demand made by the applicants in applications. He stated that he made amendments in entries in the register at the instance of the applicant and those amendments were made in respect of Exhibit – 42 register only and not Exhibit – 41 register and thereafter he was declared hostile and learned APP asked in examination-in-cross that he was making entries in the register as per what appellant No.1 was dictating, but again he stated that he made entries after verifying the applications. He denied the suggestion made by learned APP that after making entries in register, after

two or three days, appellant No.1 stated to make amendments in the quota of allotment of saplings in the register and he amended accordingly. In cross-examination on behalf of the appellants, he stated that he was acquainted with the handwritings of appellant No.1 because he was working with him for about one year. He was confronted with the applications at Exh.-22 and Exhibit – 24 and other two applications and stated that the handwritings of those applications did not pertain to appellant No.1 and all the four applications appeared to be written by the same person. Then he was asked about the interpolations made in respect of quota of the saplings. He stated that appellant No.1 directed him to make amendments and over-writings in the entries in the register. Exhibit - 24 application belonged to Mulji Savadas was noted in the register for big farmers. In application originally 4,000 saplings were demanded and thereafter it was amended to 2000 saplings and thereafter again amended to 3,000. When applications received by him, the applications contained those amendments. He stated that he made amendments as per the say of the applicant. Like wise he stated about other applications as well. In para-5 he stated that at 5th Floor of Multistoreyed Building where Forest Department was situated. As soon as coming out of the lift on northern portion, there was one parapet. From that lobby, entrance

was to Block Nos. 2 and 3 of the fifth floor. Near the lift of block No.3, there was a chowk like porch and from there, there is a way for going to that block and Forest Department. In both the sides of lobby, offices of Forest Department and Deputy Engineers were situated in direction of east – west. Then he again was asked about locations of the offices. In para-6 he was asked about the inside location of the office where appellant No.1 was sitting. He stated that between his table and the table which the appellant No.1 was sitting, was about one foot and there was a window nearby and he stated the size of that window. He stated that how the arrangements of sitting of the employees was made. In para -7 he stated that it did not happen that on 22nd of July, 1985, two persons appearing as farmers came to the table of appellant No.1 and any conversation had taken place between them and he denied all the incident as stated by the prosecution to have occurred. In this para, he again stated that appellant No.1 went out of office and in the lobby two persons who were sitting on a bench, appearing as farmers, followed him and thereafter appellant No.2 went out of the office. Near parapet many employees were gathered to watch the rally. He stated that in his office, ordinarily, many persons were visiting, like farmers. He stated that when experiments of anthracene powder and ultra violet lamp was executed, all the employees were present, but

those experiment was shown to none of the employees. This is all the evidence of this witness.

9.6 Natvarlal Chunilal Thakar, PW-6, Exhibit - 43 stated that he was working at relevant juncture at Range Forest Office situated at Junction Plot No.5, one Mr. Sama was Ranger Forest Officer. His office was working under the office situated in Multistoreyed Building. Lodhika taluka was situated in their jurisdiction. He stated that when they received applications from farmers for saplings, the same were noted in the register and for allotment of saplings, the applications were forwarded to their Head Office. The applications were required to be made in the prescribed forms and those forms were available in his office. He was shown a register at Exhibit – 45 in which he stated that he noted the applications of the four applicants in the register at Sl. No. 45, 46, 47 and 48. That entries in the register of these four applications were in his own hand writing. He stated that after noting these applications in the register, with forwarding letter, all the four applications were forwarded to his Head Office. He stated that he did not notice any interpolations or overwriting in any of the applications when he forwarded those applications to his Head Office. He was confronted with the Exhibit–44 in his cross-examination by accused and he stated that in the

application of Keshu Alarakha Sandhi, in the register at Exhibit-44 from 2,000 saplings to 3,000 saplings was amended. He stated that he could not say the exact date on which he noted the entries in the register. He deposed that he made those entries either on 9th July or 10th of July, 1985. He stated that in their Office Outward as well as Inward registers were kept and a register was kept for the letter which were forwarded to his Head Office. This is all the evidence of this witness.

9.7 Ramniklal Sundarji Detroja, PW-7, is examined at Exh. 46. He produced the appointment letters at Exhibit – 47 in respect of the appellant No.1. The appellant No.1 was posted at Distribution Branch at Rajkot. This witness appears to have been examined upon an application filed by the prosecution and was not cited as witness in the charge sheet. He also produced Exhibit – 48 transfer order of appellant No.1 by which appellant No.1 was transferred to North Zone to Distribution Range, Rajkot. At Exhibit – 49, sanction to prosecution appellant No.1 is produced.

9.8 The last witness examined is Bharatsinh Prabhatsinh Sarvaiya, PI, PW-8. He was working as PI, Rajkot, in Anti Corruption Bureau. He deposed that on 20th of July, 1985, complainant approached him at 16.00 hours and declared his

grievances, which he recorded in the form of complaint. The next day was Sunday and, therefore, he was directed to come on 22nd of July, 1985 along with an amount of Rs. 200/-. On 22nd of July, 1985, complainant reached his office and he called two panchas, who in turn expressed their willingness to cooperate. He stated about the procedure which was carried out right from the introduction of each other at his office the experiments of anthracene powder and ultra violet lamp. He stated the fact about the first part of panchnama. He also deposed that the muddamal notes smeared of powder was placed in left side pehran pocket of the complainant. He deposed that he instructed the complainant, panchas and raiding party members to go along with him at Multistoreyed building. Necessary instructions were given to complainant and panch No.1. It was stated that the complainant was required to talk with appellant No.1 about the saplings and if appellant No.1 demanded the bribe, then the complainant was to give the amount kept in his left hand pocket of pehran. Panch No.1 was made to change his clothes from regular to farmer. The complainant was directed to deliver the muddamal notes if the bribe was demanded by appellant No.1 and panch No.1 was directed to notice the delivery of the amount and the conversation which might take place between appellant No.1 and complainant. They were also instructed to give signal if the amount was

accepted by appellant No.1. He further stated that the panchnama Part-I was over and thereafter , they reached at Multistoreyed Building and complainant as well as panch No.1 entered in the office of appellant No.1 and the members of raiding party stationed in the lobby at respective places. In the meantime, panch No.1, appellant No.1, appellant No.2 and complainant all came out from the office of the appellant No.1 and since the raiding party members were standing near the lift, the appellant No.1 directed the complainant to deliver the amount to appellant No.2 and appellant No.2 accepted this amount, at that very juncture they raided. Both the appellants were made aware of the situation and he introduced himself. He asked appellants about for what purpose they had taken money from the complainant, but none of them replied. The amount was kept by appellant No.2 in his hand. They were directed to stay out. Thereafter all of them went in the office of appellant No.1 and the experiments were carried out by ultra violet lamp. The muddamal notes were recovered from appellant No.2. In ultra violet lamp the hands of appellant No.2 and panch No.1 were found tainted with anthracene powder marks. The anthracene powder marks were also visible from muddamal notes. The numbers of muddamal notes were compared with first part of panchnama which were tallied. The anthracene powder marks were also visible

in the pocket of pehran of the complainant. Thereafter, appellant No.2 was arrested and was taken to ACB Office and investigation was carried out. He was asked in cross-examination that in the compound of ACB Office, other offices were also situated and during the office hour, many employees were coming to that compound. In para-13 he stated that both the panchas, who were found from western gate of their office and he had to go at the distance of two to three minutes only. In Rajkot right from his transfer till he left on transfer to Palanpur, he was staying in the same residential quarter. Then he was asked about the situation of his quarter and other quarters. In para-16 wherein the police officers were residing at that juncture. He stated that Exhibits 22, 24, 26 and 28 applications were obtained by him during the statement he recorded of Mr. Chawla, Conservator of Forest, and he produced those applications. In reply, why those applications were not seized through panchnama, he stated that he felt that the same was not necessary. He admitted that when applications were produced by Mr. Chawla in his statement, there were overwriting in the applications. He stated that no signature of any of the Forest Officer was made on any of applications. He stated that he recorded the statement of Mr. R.D. Patel, B.G. Bhatt, but he did not record the statement of Mr. Babriya. About handwritings in the applications Exhibits 22,

24, 26 and 28, except the complainant, he did not make any investigation. He stated that during investigation, nothing was forwarded to handwriting expert. This is all the evidence of PW-8.

10 Learned Senior Counsel Mr. K. J. Shethna on behalf of the appellants submitted that the whole incident is concocted one and does not inspire any confidence. It was contended that the very basic fact which tempted to file a complaint is narrated by the complainant in para-6 of his deposition wherein he stated that after the complainant left the office of the Forest Department, he felt that a complaint was required to be filed and he should not be a party to give bribe. It is stated that the complainant may depose anything for the success of trap and for convicting the accused, but at the same time, it must be borne in mind that the complainant is willing party to offering bribe, his evidence must be considered from that angle. It is submitted that the striking feature of the case is that the so called bribe has not been accepted by appellant No.1 and according to prosecution case, this bribe is accepted by appellant No.2. It is further submitted that not only that but the purpose of bribe which was to deliver the orders of allotment of saplings was already over before bribe money exchanged hands. It is submitted that on probability it would not possible that once the orders are delivered to the complainant, for which allegedly bribe was demanded, the complainant would give bribe to appellant

No.1 or appellant No.2. It is not the case of the prosecution that the papers, which were crux of the whole episode, were withheld by appellant No.1. On the contrary, in the evidence of complainant himself and panch No.1 it is amply clear that first the papers in respect of allotment were handed over to the complainant and according to prosecution case itself thereafter the amount exchanged the hands. Attention of this Court was drawn to the evidence of complainant as well as panch in this respect. Learned Counsel further vehemently argued about the manner of selection of panchas and the performance which was shown by the complainant and panch No.1 in evidence in respect of trap laid. Learned Senior Counsel submitted that in the evidence of Investigating Officer Mr. Sarvaiya, it comes out that he called the panchas. While in the evidence of panch No.1 it comes out very clearly that panchas were selected in very perfunctory manner from the road. This is so because panchas are selected and panch No.1 was residing in quarter nearby the residence of Mr. Sarvaiya and, therefore, with purpose, it appears from the record that these panchas were selected. It was further submitted that the manner in which the role for panch No.1 to perform was selected throws doubt. Firstly, it is stated that there was no such need and the need would arise only if the appellant No.1 knew panch No.1 and this fact was asked in cross-examination to panch No.1 that on seeing him, appellant No.1 stated that panch No.1 was a clerk in a college and was studying with him. It is submitted that

the selection of panchas as well as manner in which this was done in respect of panch No.1, there is serious doubt in the prosecution case. It is submitted that this is pre-arranged raid in which appellant No.1 and appellant No.2 both were badly framed up. It was submitted that the fact which is required to be considered in this respect is, the panch No.1 did not object to change of clothes nor he asked that whose clothes were given to him and for what reasons. In para-9 of his deposition, he submits casually that after the raid was over, they went to the ACB Office, he changed his clothes and went home. It is not explained that how a farmer dress was made available in ACB Office and without any hesitation which was accepted by panch No.1 to wear the clothes of farmer, which creates doubt. Learned Senior Counsel submitted that in the evidence of panch, parrot like version is coming out. A person would not remember what happened two/three years back before and even then panch No.1 deposed almost all the facts of the panchnama which creates doubt that he was purposely selected by Mr. Sarvaiya for framing up appellants No. 1 and 2. It was further contended that how the events have taken place renders improbabilities in prosecution case. It was submitted that manner in which the complaint is recorded on 20th July, 1985 and the manner in which it was registered on 22nd of July, 1985 and sent to the concerned Special Judge immediately is the suspicious circumstance. Attention of this court was drawn to copy of the report under Section 157 of the Cr. P.C. made by ACB Office to

concerned Special Judge. It was submitted that above all, how the appellant No.2 would accept the amount upon direction of appellant No.1 from the complainant. It is submitted that the prosecution has not proved proximity or closeness between the appellant No.1 and appellant No.2. In the evidence of complainant as well as panch No.1 what transpires is after directing complainant and panch No.1 to wait and sit on a bench, according to prosecution case, some conversation took place between appellant No. 1 and appellant No.2 in whisper tone. Therefore, what transpires at that juncture between appellant No.1 and appellant No.2 neither was heard by complainant nor by panch No.1 and unless it is proved that both the appellants had proximity and closeness, it is improbable to believe that appellant No.2, according to him, had visited casually for his work in the Forest Office on that day, would accept the amount from the complainant at the direction of appellant No.1. According to learned Senior Counsel, this fact emerging from the evidence of prosecution case, creates doubt in this respect. Learned Senior Counsel also submitted that through panchnama and through the evidence of complainant and panch No.1, it is an admitted fact that instructions were given by Mr. Sarvaiya to both of them i.e. complainant and panch No.1 that if the amount was accepted by appellant No.1, pre-arranged signal was to be made by any of them. No such instructions was carried out and on the contrary in breach of such instructions, the amount was to be delivered on

demand of appellant No. 1, complainant delivered the amount to appellant No.2. Learned Senior counsel submitted that this is also a suspicious circumstance. It was further submitted that not only that but according to prosecution case, though raiding party members including Sarvaiya were noticing that the amount was delivered by complainant to appellant No.2 as soon as Mr. Sarvaiya reached there, asked to the appellants that for what purpose they had accepted the amount. It was submitted that when and if the incident was witnessed by Mr. Sarvaiya, there was no necessity on his part to ask that what purpose the amount was taken. The natural conduct of appellant No.1 and appellant No.2 is also required to be noticed according to learned Senior counsel. He submitted that the incident took place in spur of moment and no attempts were made by appellant No.1 or appellant No.2 to put this amount in pocket of any of them. Learned Counsel further submitted that it is improbable that in presence of unknown person i.e. panch No.1, appellant No.1 would accept the bribe amount. It is submitted that, however, overzealousness and extra care has been taken right from the recording of the complaint till the raid was completed by P.I. Sarvaiya. Attention of this Court was drawn to the contradiction of the evidence of the complainant and panch No.1 in respect of acceptance of bribe on 22nd of July, 1985 by appellant No.2 as to whether the bribe was accepted when all were walking and in examination-in-cross, he admitted that they were standing near parapet. It is submitted that improbability

further crept in prosecution case when panch No. 1 deposes that he did not know where the persons of raiding party were situated and instructions were clear that he was to give signal so as to be seen by panch No. 2 and others. The statements of other persons present in the office at the time of the raid are not recorded. There were interpolations in the dates of filling of challans which goes to the root of the case as to whether in fact the complainant visited office of appellant No.1 on 17th of July, 1985 and first demand was made. The challans in this respect must be scrutinized which bears no signature of the person who deposited the amount through challans which is evident from the evidence of PW-3 Mr. Chawla. The fact that the interpolations made at the instance of appellant No.1 is also not proved in view of evidence of PW-5 Bipinkumar Natvarlal Gotech when he categorically stated that the amendments in the register were not in pursuance of the instructions of the complainant. It is submitted that it must be noted that on 17th of July, 1985, the amount of bribe was not decided as per the prosecution case. On the contrary, what is stated by the complainant is suggestive that appellant No.1 demanded the bribe amount for his superior as the complainant stated that the appellant No.1 told the complainant that he was required to persuade his superiors for allotment of more saplings. In any case, it is submitted that this is a peculiar case when the amount is not accepted by appellant No.1 and the previous talk between appellant No.1 and appellant No.2 has not been proved

and appellant No.2 was not at all concerned with any of the parties, on probability, again the case is required to be examined from the angle as to whether for the appellant No.1 was it safe to accept the amount in the lobby or was it safe to accept the amount in his own office and, therefore, the case remains with the region that the appellant No.1 did not accept the amount and the abatement as envisaged by Section 165 (a) the Indian Penal Code could not be established by the prosecution case. Both the appellants have explained the circumstances and this defence of each of the appellant is acceptable and probable. Intervening period from 17th of July and 20th of July, 1985 when complainant came to be recorded, is a time gap, which raises cloud of doubt upon the prosecution case and ignorance offered by the complainant is not tenable. Though the complaint was recorded on 20th of July, 1985, the same came to be registered on 22nd of July, 1985, which is apparent from the report placed on record which was made by the ACB officers to the concerned Judge under Section 157 of the Code of Criminal Procedure. On overall consideration of all these aspects it was submitted that the prosecution has failed to establish case against each of the appellant beyond reasonable doubt and that the defence pleaded by them is probable. It is, therefore, contended that the appeal be allowed and the judgment and order impugned convicting and sentencing both the appellants be set aside.

11 As against that, learned APP Mr. S.S. Patel submitted that there is no reason either for PI Mr. Sarvaiya or for complainant or for panch No.1 to conspire together to frame appellant No.1 and appellant No.2 in this serious case. It is submitted that the prosecution case as established by the evidence of complainant PW-1, Panch No.1 and PW-2 and Mr. Sarvaiya PW-8. In addition to this, corroboration has received by the prosecution case through the evidence of PW-4 Mr. Kuril when he stated that challans were filled in by appellant No.1 and it was the duty of the appellant No.1 to allot the quota of saplings to respective applicants. He further corroborated the prosecution case that two persons appearing as farmers had approached appellant No.1 on the day of raid. This witness further corroborates the prosecution case that the applications Exhibits 22, 24, 26 and 28 contained endorsement in the handwriting of appellant No.1 clearly denoting the allotment of saplings and details of challans. The documentary evidence produced corroborates the prosecution case that at the instance of the appellant No.1, over-writings were made in the applications by complainant. There was animosity between the parties to depose falsely against both the appellants and there is no reason to disbelieve these witnesses. Complainant corroborates his complaint and he is further corroborated by the evidence of panch No.1. Both the witnesses in turn corroborates panchnama prepared. The raiding party members had seen the exchange of bribe amount and, therefore, there was no need for pre-arranged

signal and that transpires from the evidence of the witnesses. PW-5 Bipinkumar Natvarlal Gotech was declared hostile witness and no reliance can be placed upon him in view of other evidence. It was submitted that the evidence of PI Bharatsinh Prabhatsinh Sarvaiya, PW-8 remains unchallenged by the defence on material part of the prosecution case as there is no cross on this aspect, no challenge is made on the aspect of experiments carried out and no challenge is made on the aspect of recovery. The only challenge made in the cross-examination is an attempt to show pre-acquaintance between the panchas and Mr. Sarvaiya. Reading the judgment, learned APP Mr. Patel submitted that a well reasoned judgment may not be interfered with for the grounds advanced in this Appeal as on appreciating the evidence it is clear that the prosecution is able to prove its case beyond reasonable doubt.

12 This court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to the broad and reasonable probabilities of the case with reference to the contentions raised by both the sides.

13 As being first appellate court, it becomes the duty of this court to re-appreciate the evidence as recorded by the trial court. For re-appreciating the evidence, it must be borne in mind that the court is required to exercise due diligence and the

standard of such exercise would be of an exercise by prudent person. The settled and celebrated principles of appreciation of evidence is not required to be noted. Suffice it to say that endeavour on the part of the court must be to find out the truth and segregate grains from chaff. If truth and falsity safely be separated, the prosecution case may be believed and the falsity can be discarded. If the truth and falsity are not separable and the ring of truth is not found in the prosecution case, the court may abandon the exercise of finding out where the truth lies.

14 It appears that, the present case is required to be separated in three parts. The first part includes the events taken place, according to prosecution case on 17th of July, 1985; the second part includes the events taken place on 20th of July, 1985 and the third and last part includes the events taken place on 22nd of July, 1985 till the raid was completed. If prosecution is able to prove all these three parts beyond doubt, then it can be said that the prosecution has established the case against both the appellants.

15 Appreciating the evidence in respect of first part, it must be noted that, according to complainant, on 17th of July, 1985, he approached appellant No.1 about four applications for eucalyptus saplings. He had demanded 7,000 saplings, his brother Kalubhai and Muljibhai, had demanded 7,000 saplings and Keshu

Alarakha Sandhi, had demanded 3,000 saplings in respective applications. In deposition of the complainant it is coming out that on that day, appellant No.1 stated that only 500 to 700 saplings could be allotted to each of the applicant. On reacting, it was stated by the complainant that 500 to 700 saplings would be much less. According to complainant, thereafter, appellant No.1 took him to outside the office and they took tea where the appellant No.1 told complainant that the appellant No.1 was in a position to persuade his superior if something was done for appellant No.1. True it is that, on that day, what amount was to be paid to the appellant was not decided, but it clearly appears that in the applications, as per the complainant, amendments were made in the applications as per the instructions of appellant No.1. On that very day, appellant No.1 filled up challans and handed over those challans to the complainant and directed him to deposit amount of Rs. 400/- for four applications in State Bank of Saurashtra. On this aspect, though examination-in-cross, was undertaken by the defence, but nothing was coming out to disbelieve this version of the complainant stated by him. On the contrary, this version was corroborated by the evidence of complainant and other documentary evidence on record. True that this fact is between the appellant No.1 and the complainant only and the demand made on 17th of July, 1985 is, therefore, required to be scrutinized carefully. Contradiction is noticed in deposition of the complainant as to whether the complainant was taken out of office by the

appellant No.1. In this cross-examination is conducted as above said by the defence in para-23 and 24 onwards. Even if the omission to state by the complainant in detail, where the demand is made by the appellant, the case of the prosecution is not weakened because this say of the complainant is corroborated by the documentary evidence. PW-3 Sugno Pohumal Chawla in clear terms submitted that at the relevant juncture, Mr. Kuril was in-charge of these duties and he was assisted by appellant No.1 and Mr. Bhatt. He has stated about the procedure to be undertaken to allot saplings. He stated that he had received those applications vide Exhibit – 33 and in register on 17th of July, 1985, the applications were registered. Of course, in para - 4 about big farmer register, he stated that the application of Mulji Savdasbhai was recorded on 11th of July, 1985. Therefore, vide Exhibit -33 and the application and from the endorsement made in the register, as stated by PW-3 Chawla, it is certain that the application was received in the office of the appellant No.1 which was initialed by him. According to his deposition, Exhibit – 33 is dated 11th of July, 1985; copies of the register are at Exhibit – 34. Further corroboration is found from the deposition of PW-6 Natvarlal Sundarji Detroja where he stated that either on 9th or 10th of July, 1985 he forwarded applications in question to his office and at that juncture there were no interpolations in the applications. This is further evident by Exhibit – 44 which denotes that the complainant – Vallabhbhai Savadasbhai had demanded 7,000 saplings, Keshu

Alarakha Sandhi had demanded 6,000 saplings, Kalubhai had demanded 3,000 saplings while Muljibhai had demanded 4,000 saplings. This evidence makes it clear that when those applications were received by the Head Office of the Forest Department, it had no interpolations or overwriting and when letter was received on 16th of July, 1985 in the office which was initialed by PW-3 Mr.Chawla and PW-4 Mr. Kuril. Mr. Kuril PW-4 further stated in his deposition that these papers were forwarded to appellant No.1 for further procedure. Therefore, the complainant derives corroboration from this evidence that he did visit the Divisional Office of the Forest Department and approached appellant No.1. The interpolations made and overwriting done in the applications were made definitely thereafter, that is also established by the above evidence. There is no reason that why the complainant would make changes in his application and in his demand of saplings unless he is so instructed, and according to appreciation of evidence, it was only appellant No.1, who could have instructed the complainant to make amendments in the application. This fact corroborates the say of the complainant that he visited and approached appellant No.1 on 17th of July, 1985 and that his further say that the appellant No.1 made demand of bribery is also probable the details as to where the demand was made as mentioned in the FIR or in the police statement, is not material contradictions at least to disbelieve the say of the complainant that he reduced his demand of saplings as per instructions of appellant

No.1 and he agreed to please appellant No.1 as desired by appellant No.1. This is further corroborated by the evidence of PW-4 Dineshkumar Gopalbhai Kuril, he stated that the challans were in the handwritings of appellant No.1 and that it was the duty of the appellant No.1 to allot quota of the saplings. Prosecution, therefore, is able to establish the case that the complainant did visit the appellant No.1 on 17th of July, 1985 and the conversation took place between appellant No.1 and complainant on that day.

16 Coming to the second part of the prosecution case, on 20th of July, 1985, he visited Rajkot and paid the amount through challans in State Bank of Saurashtra. He stated that on 17th of July, 1985, when he came out after meeting appellant No.1, the bank was closed and, therefore, he went straight to his village. He stated that thereafter two days there was rain and he could not visit Rajkot. The explanation offered by the complainant is acceptable because the date of depositing of challans in the bank was 20th of July, 1985 as there is notings from Exhibits 34 to 38, copies of the challans. The explanation for these two days on which complainant could not visit Rajkot on account of rain is also probable and not unusual as to discard the same. There is no reason that why the complainant would not visit Rajkot during these two days otherwise and would visit only on 20th of July, 1985 to pay the amount of challans. It is an established circumstance

that the complainant and his other three applicants were definitely in need of eucalyptus saplings. So, the story of the complainant that he visited the bank and paid the amount through challans on 20th of July, 1985 stands proved as nothing is found unusual to disbelieve the version of the complainant and in this respect it may be noted that he conveyed this aspect with other applicants as well. On 20th the complainant visited appellant No.1 again after visiting the bank where the appellant No.1 informed him that it was decided to allot in all 12,000 saplings to all applicants and again he was taken out of the office of the appellant No.1 where he demanded Rs. 200/- from the complainant. Necessary to note here that the complainant has stated that he attempted to obtain orders on that day stating that he was having Rs. 20 to 25 and not more than that. He also stated that he would pay to the appellant afterwards while the appellant stated that nobody took care to make any payment after the work was done. This fact which is vital for the prosecution case is not only proved by the evidence of the complainant, but it has a ring of truth, proved by documentary evidence as well. The evidence of PW-4 Mr. Kuril is required to be referred to. He stated that in all four applications, orders were prepared in the handwritings of appellant No.1 and he had signed all those orders from Exhibits 35 to 38 on 20th of July, 1985. Meaning thereby that, it is proved beyond doubt from the challans that the amount was definitely paid through challans by the complainant in the State Bank of Saurashtra on 20th of July, 1985

and that those orders were prepared and signed also and delivery was kept ready. In these circumstances, with this proved facts, the demand made by appellant No.1 of Rs. 200/- from the complainant is required to be appreciated. The orders could have been delivered by the appellant No.1 to the complainant on 20th of July, 1985, but that was not done even though the orders were ready. The visit of the complainant to appellant No.1 was proved. Therefore, not only by the oral evidence of the complainant but by the documentary evidence of challans and the orders. Those orders could be passed only when the challans are received by the office denoting that the amount of saplings is paid by the respective applicants through challans and when respective applicant produced a copy of the challan in the office. Therefore, it is clear that since the orders were ready on 20th of July, 1985, for the allotment of saplings and that could have been made only after the applicant produced copy of the challans in the office and the circumstance that, on that day those orders were not handed over to the complainant, indicates the only inference which could be drawn from this circumstance is the say of the complainant has a ring of truth that the appellant No.1 demanded an amount of Rs. 200/- on that day from the complainant and did not deliver the orders for the allotment even though they were ready. There is no contradiction so far as the proving of this aspect by the prosecution is concerned. It is not material whether the complainant mentioned in his complainant or in his police statement that the

demand was made by appellant No.1 after taking the complainant out of the office. The deposition is in details while complaint or police statement may not be in that detail. In any case, this is not a contradiction which falsifies the say of the complainant that on 20th of July, 1985, appellant No.1 demanded an amount of Rs. 200/- from the complainant. Contradiction is a situation wherein out of two versions, one could stand and other would not. The fact remains that the consistent say of the complainant is that appellant No.2 demanded Rs. 200/- on 20th of July, 1985 and when this say is corroborated by documentary evidence and other circumstances of the prosecution case, omission to mention by the complainant in FIR or in police statement that the demand was made out of the office or in the lobby or while taking tea, is not the contradiction affecting the say of the complainant. The event taken place thereafter is corroborating the say of the complainant. Naturally when complainant visited bank and thereafter visited Forest Department office, he could reach Anti Corruption Bureau Office at about 16.00 hours on that day. This is a clear by deposition of PW-8 Mr. Sarvaiya that at about 16.00 hours the complainant reached his office. There is no maneuver of any short is found in this simple and natural say of both the witnesses i.e. complainant and PW-8 Mr. Sarvaiya. Both the witnesses have corroborated each other. Further, it was not possible naturally to arrange trap. As per the say of appellant No.1, the complainant was called on Monday i.e. 22nd of July, 1985 during office hours

and secondly the complainant was not having the amount to be presented as muddamal currency notes in laying of the trap. So, thus, the second vital part of the prosecution case is established beyond reasonable doubt not by the oral evidence but as supported by the documentary evidence. Pertinent it is to note here that in applications at Exhibits 24, 26, 28 and 22, endorsement is proved to be in the handwritings of the appellant No.1 to the extent that 3,000 saplings are allotted along with the details of challans. This is clear by the evidence of Mr. Kuril PW-4. This endorsement would have been made only after the challans are deposited and thereafter the orders might have been prepared, but not handed over to the complainant. This circumstance leads to believe that as per the say of the complainant, appellant No.1 demanded Rs. 200 by way of gratification from complainant for allotment of saplings. The second part, therefore, stands proved by the prosecution.

17 So far as the third part is concerned, much is harped upon the manner and selection of panchas as per the contentions noted above raised by learned Senior Counsel for the appellants. In this regard, the evidence of panch No.1 as well as PW-8 Sarvaiya, is required to be seen. At about 9.30, according to evidence, complainant reached in the ACB Office and Mr. Sarvaiya thereafter attempts to obtain independent panchas. According to panch No.1 while he was passing through Saurahstra Emporium,

he was stopped by Mr. Sarvaiya and inquired about his willingness to cooperate in a government work. It would be noted that panch No.1 i.e. PW-2 Sureshkumar Karshandas Maradia was an employee of Science College and was working as Laboratory Assistant. He stated that one more person was passing from there and Mr. Sarvaiya also stopped him and asked about his name and occupation and the other person named as Dipak Trivedi also expressed his willingness. In this respect, PW-8 Mr. Sarvaiya stated that two panchas were called. This is found from para-2 of this deposition. In detail he has been cross-examined by the defence to show that there was pre-acquaintance between panch No.1 and Mr.Sarvaiya on account of their residence i.e. government quarters situated nearby. Paras, 15, 16 and 17 of the examination-in-cross Mr. Sarvaiya is asked about the location of the quarters of panch No.1 and the Investigating Officer, but nothing fruitful is coming out to believe that panch No.1 or panch No.2 in any manner were under the influence of police to the extent that they would co-operate to frame other government servants in a false trap. When this evidence is considered along with the evidence of panch No.1 PW-2, it is clear that there is nothing unusual on the part of the Investigating Officer to come out of his office and to ascertain panchas. It appears that Mr. Sarvaiya has taken care to know the status of both the panchas and satisfied himself that these were the panchas who can act independently and this is found from para-2 of the deposition of panch No.1 at

Exh. – 30. Merely because in same compound, perhaps, in government quarters, police personnel as well as other government servants are residing together, it can never be believed that the government servant would act according to the instructions of police personnel to the extent that even they would readily agree to lay false trap to frame the government servant in serious cases like the present one. Even the changing of the clothes of panch No.1 is also not unusual as contended. It must be noted that the complainant was a villager and in his traditional villager dress, the trap was to be laid, which was likely to be noticed by the appellant No.1. The company of sophisticated persons with a farmer and there would chance that the crime which was likely to be committed would have to be condoned by all concerned. It appears that, therefore, the care is taken by Sarvaiya that whoever accompanies the complainant should appear that, such person comes from the same strata of the society to which the complainant belonged. The suggestions made as to pre-acquaintance of panch No.1 with PW-8 PI Sarvaiya are emphatically denied by panch No.1 and the complainant. Both the suggestions made and denied by the witnesses does not form evidence unless in exceptional circumstances when it is found that the witnesses were not creditworthy or any other exceptional reasons. Therefore, the manner in selecting of panchas or to change the dress of panch No.1 itself is not doubtful as has been contended. On the contrary, an impression is created through this

evidence that police officers as well as the panchas conducted themselves in a manner that they were independent person and were working for an objective to detect a serious crime. When overall appreciation of the evidence of panch No.1 is undertaken, it is found that merely couple of contradictions as to the amount was accepted by appellant No.2 by walking or by standing, nothing could be brought about in cross-examination to lable this witness as to be a liar and to brand him as untruthful witness. Care and scrutiny to the utmost extent is required. The evidence of panch No. 1 in this respect is required to be appreciated in the facts of the prosecution case that it is established that it was the duty of the appellant No.1 to allot saplings. It is established that as per the instructions of appellant No.1, complainant paid the amount through challans. It is established that the orders were kept ready for delivery on 20th of July, 1985 itself, but were not delivered to the complainant and this fact, as aforesaid, is established by documentary evidence. The evidence, therefore, of panch No.1 is to be examined from this background of the prosecution case. In clear terms, panch No.1 and complainant deposed that they approached appellant No.1 on 22nd of July, 1985, they were made to sit on a bench and wait. One more person i.e. turned out to be appellant No.2 was standing near the table of appellant No.1. The contentions is, the prosecution failed to establish the proximity between appellant No.1 and appellant No.2 as they whispered conversation among

themselves which was not heard by complainant or panch No.1. It must be noted here that on overall appreciation of the evidence, it is also not coming out from the record of the case that there was any enmity between appellant No.2 and the complainant or panch No.1 and why complainant or panch No.1 would involve appellant No.2, who was totally unknown person in this trap as the acceptor of the bribe at the direction of appellant No.1. In these circumstances, while ring of truth is explained, it must be inferred that what was whispered between the appellant No.1 and appellant No.2 was in respect of accepting the amount from complainant. Appellant No.1 wanted to remain out of the game. There is no otherwise reason for complainant to forcibly put the amount in the hands of appellant No.2 merely because he was found standing at the table of appellant No.1 and in pursuance of this appreciation of evidence, when the say of the complainant and panch No.1 is scrutinized on the anvil of probability, it is found natural that the appellant No.1 gathered the papers from his table and which were the papers of allotment orders for the saplings and instructed the complainant and panch No.1 to come out and also instructed appellant No.2 to come out. It must be noted here that it was and it could not be, in all probability, envisaged by the Investigating Officer that appellant No.1 would direct to hand over the bribe amount to appellant No.2 and therefore the question of not indicating pre-arranged signal would not arise at all. This is so because unless the amount was entrusted to appellant No.2 as per

the instructions of appellant No.1 and this incident was witnessed by the raiding party members, Mr. Sarvaiya rushed where the appellants were standing. This explanation is given by complainant, panch No.1 as well. The breach of instructions as given in panchnama would not render the prosecution case doubtful. At the same time, when overall evidence is appreciated, it could not be said that the papers for allotment of orders delivered first and the amount was passed thereafter. Even if, that be so, it could be measured in seconds only and it would be safe to infer that the handing over of the papers and passing of the bribe amount was almost simultaneous. True if some time is passed from handing over the papers and acceptance of bribe even for 10 to 15 minutes, prosecution case might have become doubtful, but what is coming out from the evidence is as soon as the papers were handed over to complainant in his right hand, he was directed to make payment to appellant No.2 and directions in seconds complied by the complainant as there was no other alternative for him. Therefore, the prosecution case would not become improbable on this account. In a spur of moment, delivery of the papers and the exchange of the bribe amount is taken place and this is the established crux and the essence of the prosecution case. It must be noted that it is one thing that the prosecution must prove its case beyond reasonable doubt and for that the courts have to satisfy itself for the credibility of the evidence and it is the second thing that while doing so court

would adopt doubting Thomas approach in criminal trials. The court would certainly endeavour to find out that why the prosecution witnesses would entrap innocent persons. There should be some explanation to that. It may not be found from the evidence but it could be ascertained from the circumstances of the case, but the circumstances of the case in this particular prosecution leads to believe this court that appellant No.2 was unknown person to PW-8 Sarvaiya, PW-1 complainant and PW-2 panch No.1 He was made forerunner by appellant No.1 only, and above all, if the prosecution witnesses wanted to falsely entrap appellant No.1, prosecution witnesses might have said that the amount was handed over to appellant No.1 only and would not have brought appellant No.2 in the scenario, but i.e. at the instance of appellant No.1 and when the appellant No.2 has accepted the amount, the abatement on his part is proved beyond reasonable doubt. It is hardly material that how many employees were present in the office on that day and whether any other employees were examined or shown experiments of anthracene powder. The pivotal question is whether prosecution is able to establish its case from the evidence on record, if not, the answer would be the acquittal of the accused, but if the prosecution is able to prove its case from the evidence on record, it could not be said that the evidence recorded could not be believed because the other witnesses were not examined and that certain circumstances were not taken care of by the prosecution. There is no substance,

therefore, in the defence version that appellant No.1 was nowhere in the picture as per his statement and that the amount was forcibly delivered by the complainant in the hands of the appellant No.2. There is no proper reasons which would satisfy an ordinary common prudence why the complainant would try to trap an unknown person, to whom he had no other dealings whatsoever, but the evidence which is recorded in gist is noted above and while appreciating the evidence and in above said manner, it is found that the prosecution has proved its case beyond reasonable doubt so far as third part of the prosecution case is concerned.

18 In above view of matter, so far as the merits of the Appeal is concerned, no exception could be found with the judgment and order impugned in this Appeal. Therefore, there is no substance in the Appeal on merits and the same is required to be dismissed so far as the conviction is concerned.

22.09.2006

19 Learned Senior Counsel for the appellants Mr. Shethna and learned APP Mr. Patel were heard in respect of reduction of sentence. It has been submitted by learned Senior Counsel on behalf of the appellants that the incident has taken place long back before 21 years almost, on 21st of July , 1985, and since then much water has been flown in the life of both the appellants. Learned Senior Counsel further submitted that so far as appellant

No.1 is concerned, he has already deprived of his job benefits and strive for his livelihood and at present working at the salary of Rs. 3,000/- in private sector with hanging sword of losing job at any time. It is submitted that appellant No.1 has aged parents in his family, wife and two children. Today his age is 47 years and for last 21 years he has already undergone agony of pending proceedings along with maintaining his family in meager salary received by him. It is therefore submitted by learned Senior Counsel that considering the amount of bribe, which is Rs. 200/- at that time, a proper and reasonable reduction in sentence is urged with folded hands by appellant No.1. Appellant No.1 belongs to a poor family and a chance to reform himself and to stable in society may be given so as to start a new life. While appellant No.2 it has been stated that he is working as a cable network operator and earning very little. In his family he has to maintain two children and wife. Today his age is 39 years and the incident has taken place before 21 years and still he is to stable in life. Learned Senior Counsel submitted that in view of above, the substantive sentence of imprisonment as inflicted by the trial court be reduced to reasonable extent. Both the appellants are the bread winners of their families and the imprisonment for a longer period would not only cast utter misfortune on them but on account of that, family of each of appellants is likely to be suffered. Learned Senior Counsel further submitted that reasonable time till month of November, 2006 be granted to appellants to surrender for serving

of sentences.

20 Having heard learned Counsels about the quantum of punishment, it is made clear that having regard to the objectives of enacting the Prevention of Anti Corruption Act, long lapse of time itself may not be the ground for mitigating the sentence because this has now become a common phenomenon but at the same time the purpose and objectives of punishment in penology and circumstances as pleaded by the learned Senior Counsel for the appellants must not lose sight of. True it is that, the case is proved against both the appellants as above said. Under Section 5(2) of the Prevention of Anti Corruption Act, 1947, for adequate reasons, the Court is empowered to award lesser punishment than the minimum. The circumstances which the learned Senior Counsel pleaded are in the circumstances of this case, in my humble view, can be taken into consideration for reduction of sentence and also the care be taken that the object and the purpose of enactment of the Prevention of Corruption Act is achieved. Each case stands on its own facts and one fact cannot be a precedent for the other set of facts. Even then, for the adequate grounds for reduction of sentence, in the matter of B.C. GOSWAMI vs. DELHI ADMINISTRATION, as reported in AIR 1973 SC 1457, the Apex Court in para – 10 referring to the objects of the Prevention of Corruption Act, and referring to the particular circumstances of that case, came to the conclusion that the ends of

justice would meet if the fine imposed was raised to Rs. 400/- from Rs. 200/- and the sentence of imprisonment was reduced to that already undergone from one and half years imposed upon the accused. Like wise, in other decision of the Apex Court in the matter of TAR SEM LAL vs. STATE OF HARAYANA, as reported in 1987 SC 806,, the Apex Court while maintaining the conviction, reduced the sentence to already undergone by the accused. In this case also delay in proceedings as well as the objectives of the enactment of the Act were taken into consideration. In the matter of VISHNU NAGNATH DESHMUKH vs. STATE OF MAHARASHTRA, as reported in 2001 Cri. L.J. 483, the sentence came to be reduced to the period of imprisonment already undergone. In view of the fact that almost 21 years have been elapsed and having regard to the particular circumstances of each of the appellant as mentioned above and more particularly when appellant No.1 has lost his job benefits, the case for reduction of sentence is required to be considered . In the matter of T.M. JOSEPH vs. STATE OF KERALA, as reported in AIR 1992 SC 1922, sentence of one year was reduced by the Apex Court to 15 days rigorous imprisonment on each count.

21 Therefore, considering the peculiar facts and circumstances of this case, this court is inclined to accept the submission made by learned Counsel for the appellants to reduce the sentence and to raise the amount of fine imposed while

maintaining the conviction in the judgment impugned. Therefore, when appellant No.1 is sentenced to undergo rigorous imprisonment of one year and to pay fine of Rs. 1,000/- for the offence punishable under Section 161 of the IPC and again he is sentenced to undergo rigorous imprisonment of one year and to pay fine of Rs. 1,000/- for the offences punishable under Section 5(1)(d) of the Prevention of Anti Corruption Ac, 1947, in humble view of this court, the ends of justice would meet if the sentence of imprisonment which is awarded to the appellant No.1 to the extent of rigorous imprisonment for one year for each of the count under Section 161 of the IPC and under Section 5(2) of the Prevention of Corruption Act, is required to be reduced to the imprisonment of one month while maintaining the conviction and raising of the amount of fine from Rs. 1,000/- to Rs. 2,000/- for each count. So far as appellant No.2 is concerned, when he is found guilty for the offence punishable under Section 165 (a) of the Indian Penal Code, for the reasons considered as above, his sentence of rigorous imprisonment is reduced to 15 days from the rigorous imprisonment of six months as imposed by the Trial Court while maintaining the conviction and by raising the amount of fine from Rs. 500/- as imposed by the Trial Court to Rs. 1,000/-.

22 In view of above, this Appeal is partly allowed and the following order is passed :

(i) So far as appellant No. 1 - Shivprasad

Jagadishprasad Sharma is concerned, while maintaining the conviction awarded by the Trial Court for the offence punishable under Section 161 of the Indian Penal Code as well as for the offence punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947, the appellant No. 1 - Shivprasad Jagadishprasad Sharma, is sentenced to undergo rigorous imprisonment of one month for each count under Section 161 of the IPC as well as under Section 5(2) of the Prevention of Corruption Act, 1947, instead of rigorous imprisonment of one year as imposed by the Trial Court for each of the said two charges. At the same time, the amount of fine is raised from Rs. 1,000/- to Rs. 2,000/- for each of the charges proved against appellant No.1 Shivprasad Jagadishprasad Sharma, in default, to undergo 7 days rigorous imprisonment. It is directed that both the substantive sentences imposed and reduced as aforesaid for the offences punishable under Section 161 of the IPC as well as under Section 5(2) of the Prevention of Corruption Act, 1947, shall run concurrently. The rest of the Appeal of the appellant No. 1 – Shivprasad Jagadishprasad Sharma, except reduction of sentence of rigorous imprisonment as mentioned above and raising of amount of fine , stands dismissed.

(i) So far as appellant No. 2 - Dharamvirsinh Balvantsinh Jadeja is concerned, while maintaining the conviction awarded by the Trial Court for the offence punishable under Section 165(a) of the Indian Penal Code, the appellant – 2 – Dharamvirsinh Balvantsinh Jadeja, is sentenced to undergo rigorous imprisonment of 15 days instead of rigorous imprisonment of six months as imposed by the Trial Court and thus the quantum of rigorous imprisonment is reduced to that extent, but at the same time, the amount of fine is raised from Rs. 500/- as imposed by the Trial Court to Rs. 1,000/, in default, to undergo 7 days rigorous imprisonment. The rest of the Appeal of the appellant No.2 – Dharamvirsinh Balvantsinh Jadeja , except reduction of sentence of rigorous imprisonment as mentioned above and raising of amount of fine , stands dismissed.

(ii) Both the appellants - accused are on bail and the bail bonds of each of the appellant stand cancelled. However, in the facts and circumstances of the case and in view of the submissions made by learned Senior Counsel for the appellants, both the appellants are granted time to surrender before the Trial Court for serving of sentence upto 10th of November, 2006.

(J. R. VORA, J.)

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